

STATUS OF HUMAN RIGHTS & SANCTIONS IN MYANMAR

MARCH 2014 REPORT

Summary. This report reviews the March 2014 developments relating to human rights in Myanmar. Relatedly, it addresses the interchange between Myanmar’s reform efforts and the responses of the international community.

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I. International Community and Sanctions

Members of Parliament in the UK Parliament have called for the budget for Myanmar of the UK Department for International Development (International Development Committee) to be increased promptly from £60 million to £100 million to enable greater support for education, including teacher training, the peace process and parliamentary strengthening.¹

Launching a report on Democracy in Myanmar, International Development Committee Chair Sir Malcolm Bruce said, “Significant progress has been made in Burma over the last few years. While a host of problems remain, a key opportunity exists for UK development programmes to help deliver transformational change. We must seize the moment. We therefore support the UK Government’s approach to support reformers in the Burmese Government to raise the country out of poverty, develop the economy and build a society that moves towards democracy. Progress will be unpredictable and uneven, but supporting the reform process by working to deliver public services and develop livelihoods offers unprecedented potential. Some critics, notably Burma Campaign UK, argue the UK is naive to reward a Burmese Government which they believe is not serious about reform. We however do not believe that progress will happen by standing back or adopting an unduly sceptical approach.”²

The outgoing UN human rights rapporteur for Myanmar, Tomás Ojea Quintana, made his ninth and final mission to Myanmar from February 14-19, 2014. He noted “significant changes” for the better in the country’s overall rights situation since he began monitoring six years ago, including presidential amnesties that have led to the release of more than 1,100 political prisoners, free and fair by-elections in 2012, and progress in winding down decades of armed conflict in ethnic border states.³

However, he said he was disappointed that Senior General Min Aung Hlaing, commander-in-chief of Myanmar’s armed forces, never once agreed to meet with him during his term. The UN rapporteur said it was important for the military to engage more with the international community.⁴

“For the time being, the military retains a prevailing role in the life and institutions of Myanmar,” said Quintana’s final report. “State institutions in general remain unaccountable and the judiciary is not yet functioning as an independent branch of the State. Moreover, the rule of law cannot yet be said to exist in Myanmar. In this regard, tackling the impunity and systematic discrimination in Rakhine State represents a particular challenge which, if left unaddressed, could jeopardize the entire reform process.” The report reiterated many of the concerns expressed by Quintana last month, at the close of his visit, regarding ongoing rights violations in Kachin State and northern Shan State, including allegations of rape, arbitrary detention and torture during interrogation. It also expressed concerns over press freedoms.⁵

The new rapporteur on human rights in Myanmar will be Yanghee Lee, a South Korean expert on children’s rights issues. She has been a member of the UN Committee on the Rights of the Child since 2003, and the committee’s chair from 2007 to 2011.⁶

II. Civil and Political Rights

A. Election-Related Laws and Acts

After the Joint Committee for Reviewing the Constitution (JCRC) had advised against implementing several of the most significant constitutional reforms related to electoral rights in February 2014, the Upper House of Parliament passed an amendment to a clause in the Constitution which would effectively exclude the Muslim Rohingya population from the political process by eliminating the right of temporary citizenship cardholders to form political parties.⁷ Since 2008, the Constitution has allowed people to form political parties, run for office and vote in elections if they possess a temporary citizenship card, or “white card.”⁸ These white cards were widely distributed in 2008 to the Rohingya population, who otherwise lack citizenship documentation, but are also relied on by political dissidents who lack citizenship cards after living abroad for decades under the former military regime. Reports have indicated that there are approximately 850,000 white card holders currently in Myanmar.⁹

The amendment banning white card holders from forming political parties was first proposed by the Rakhine National Party (RNP), which represents the Buddhist Arakanese community in western Myanmar.¹⁰ Aye Maung, chairman of the RNP, stated that the amendment is important to ensure that the political process in the country remained under control of those with full citizenship rights.¹¹

As Myanmar continues its national debates regarding constitutional reform, its electoral officials have announced that the country will hold by-elections in November or December of 2014 to fill 30 seats in the national parliament and various state legislatures, with the next general and presidential elections to be held in November or December of 2015.¹² Tin Aye, chair of the Union Election Commission, announced that the 2014 by-elections were to be pushed back to the end of 2014 due to weather and other items on the government’s agenda, such as the country’s chairmanship of the Association of Southeast Asian Nations and the first national census in decades.¹³ After boycotting the 2010 general elections, the National League for Democracy has confirmed that it will participate in, and contest, the 2014 by-elections.¹⁴

B. Press and Media Laws/Restrictions and Freedom of Association

In March 2014, President Thein Sein signed into law two new media statutes that had previously been approved by the Parliament.¹⁵ The state-run media outlet, The New Light of Myanmar, heralded the President’s signing and reported that “investigative journalism and critical reporting [is now] backed by government.”¹⁶ Members of the country’s media responded to the laws with more mixed reactions, however. While the new media laws mark the end of the junta-era 1962 Printers and Publishers Registration Act, which carried prison terms of up to seven years for various vague charges, the newly adopted 2014 Printers and Publishers Registration Law preserves the ability of the government to punish media members with fines for violating vaguely defined bans against “inciting unrest,” “insulting religion,” and “violating the Constitution.”¹⁷ The 2014 Printers and Publishers Registration Law furthermore allows the Information Ministry to exercise unilateral power to withhold or revoke publishing licenses.¹⁸

The second of the two new media acts, the 2014 Press Law, was proposed by journalists and focuses on enforcing issues such as journalistic ethics, intellectual property rights, and access to government documents.¹⁹

In the trial of four journalists and the CEO of Rangoon-based Unity Journal, who were detained by the police after the newspaper reported the existence of an alleged chemical weapons factory in the Magway Region of central Myanmar, the Pakokku district court has denied bail to the defendants.²⁰ The Myanmar Press Council has asserted that it will continue to monitor the trial and try to negotiate with the prosecution for reduced charges on behalf of the defendants.²¹

III. Economic Development

A. Developments in the Legal Framework of Economic Development

Transparency continues to be a keyword in discussions about the country's economic reform, with economist Myint urging its importance in the privatization of Myanmar's state entities.²² Speaking to reporters, Myint said that strict privatization laws that promote transparency are necessary to avoid cronyism and a lack of accounting for the handling of former state assets.²³ Suggesting that the entire process should be made transparent, he told reporters that he continues to propose the same to President Thein Sein as well as others.²⁴ Soe Tun, managing director of Wakhema Trading, added that more trustworthy oversight is necessary in addition to transparency regulations.²⁵

Myanmar and the European Union have started taking steps toward further cooperation including increasing exports to the EU and developing an investment protection agreement.²⁶ EU Commissioner for Trade Karel De Gucht visited Myanmar and spoke with President Thein Sein and his Minister of National Planning and Economic Development, Dr. Kan Zaw, discussing a possible investment protection plan that would encourage further European investment in the country.²⁷ Bilateral trade with the EU increased by just over two-fifths last year, with Myanmar's exports increasing by over one-third.²⁸

B. Developments in Foreign Investment and Economic Development Projects

India's Reliance Industries Limited and Oil India Limited were awarded offshore oil and gas blocks at the end of the month, joining Shell, Chevron, BG Group and others as winners of a number of shallow- and deep-water blocks up for bidding.²⁹ Norway's Statoil, along with partner ConocoPhillips, also won a deep-water exploration block in the bid, securing a 9,000 square km block in a promising but unexplored location.³⁰ The year-long auction is expected to be an important test of the government's transparency, with the oil and gas sector now making up approximately two-fifths of foreign investment.³¹

At the same time, the government plans to ban exports of raw timber in a move intended to encourage the growth of a domestic wood-processing industry.³² Myanmar is one of only a few countries to allow the export of raw timber, which is often sold at less value than they are worth, at the expense of potential domestic processors, and both a foreign report and official domestic figures indicate that a high percentage of timber trade is illegal.³³ Not unlike other industries in Myanmar, the wood-processing industry is suffering from cronyism and corruption, although the

ban shows some signs of potential with foreign investment in timber processing apparently in the rise, led by Indian investors.³⁴

Meanwhile, Minister of Transport Nyan Htun Aung expressed the government's interest in establishing Myanmar as a major air hub in Asia, speaking at a conference in Yangon at the end of the month.³⁵ The plan includes regulatory changes, infrastructure improvements, promotion of airlines and strategic destination linkages, as well as promotion of foreign investment.³⁶ Currently only state-owned companies can provide air transport services, although regulatory reforms including grants of waivers may allow private companies to participate.³⁷ Twenty-eight international airlines currently operate in Myanmar, alongside seven domestic airlines.³⁸

C. Land Seizures

As noted in our December 2013 report, at the end of last year a group of protestors from Migyaungkan village staged a two week long demonstration in Yangon in protest of the military seizure of their land in the 1990's, eventually disbanding with a vow to return in three months if the promised redress had not been received.³⁹ Claiming that the government did not keep their promise, a group of over one hundred protestors restarted their sit-in protest this month.⁴⁰ Resuming their protest this time in Mahabandula Park, the protestors again stated their desire for an investigation commission into the land seizure.⁴¹

The group was forcibly ousted in the early morning of March 30, 2014 by 2,000 police officers after refusing to comply with a police request to disperse.⁴² One report also identified a raid on the protest camp by a group of people wearing red armbands, purportedly with the goal of "destroying" the camp.⁴³ Protestors returned for a period after the raid⁴⁴ and eventually regrouped at a neighboring location, but were again evicted by a smaller police force numbering 1,000 officers.⁴⁵

The group's continued protests earned them a meeting with authorities at City Hall, where they reiterated their demand to have the government return the land they claim was unfairly seized.⁴⁶ MP Thein Nyut expressed his wish for the protestors to peacefully remove their camp and reduce their expectations of seeing all of the confiscated land returned, while asking the government to "take fair action" and give compensation to the protestors.⁴⁷ Lieutenant Colonel Thet Naing, in response to the protests and speaking for the Yangon Regional Command, has said that they will not give the land up, stating that the land "is intended for the soldiers who sacrificed their lives for the country."⁴⁸

Meanwhile, in Bago region, approximately one thousand farmers from Pyay district gathered to protest the seizure of over 20,000 acres of land by the military and call for its return.⁴⁹ In Tamwe township, another group of protestors continued a two-month long sit-in demanding compensation for a 1994 seizure of land for unrealized military purposes, the land instead eventually having been acquired by a private company.⁵⁰ Meeting with the protestors, Colonel Tin Win of Security and Border Affairs urged them not to conduct the protest in a way that would "disturb the liberty of others."⁵¹

IV. Ethnic Violence

A. Violence Against Muslims

President Thein Sein ordered an executive commission and the country's Union Supreme Court to draft the Emergency Provisions on Marriage Act for Burmese Buddhist Women, a law that could restrict interfaith marriage and include population controls.⁵² The law is widely considered to target country's Rohingya Muslims. The current version of the bill, drafted by lawyers of the nationalist Buddhist 969 movement, would require Buddhist women to get permission from their parents and local government officials before marrying a man from another faith, require non-Buddhist men to convert to Buddhism before marrying a Buddhist woman, limit the number of children people can have, and tighten restrictions on polygamy. The Union Supreme Court is reportedly drafting the sections of the bill relating to marriage and population control. Human Rights Watch said the law enshrines "blatant discrimination" and called the law unconstitutional and a breach of Myanmar's international commitments. Article 348 of Myanmar's Constitution states that the government "shall not discriminate any citizen of the Republic of the Union of Myanmar, based on race, birth, religion, official position, status, culture, sex and wealth." Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women, to which Myanmar is a party, specifies that governments should ensure that women and men have "the same right to enter into marriage."⁵³

The Upper House of Parliament passed an amendment to the Constitution that would remove the right of temporary citizenship card holders to form political parties.⁵⁴ Temporary citizenship cards, or "white cards," are primarily held by Rohingya Muslims and political dissidents who returned to the country following the country's recent democratic reforms. While the government does not recognize the Rohingya as Myanmar citizens, it issued them white cards so they could vote in favor of constitutional changes in 2008 and vote for the Union Solidarity and Development Party in 2010 national elections. The amendment will need to be approved by the Lower House of Parliament to become a part of the Constitution. The current Constitution allows holders of white cards to form political parties, run for office and vote in elections. The chairman of the Rakhine National Party intends to ask Parliament to strip voting rights from white card holders as well.

In late March, the government began a nationwide census that includes ethnic identification categories, its first census in more than 30 years.⁵⁵ Buddhist protestors in Rakhine State, worried that the census would legitimize the status of Rohingya Muslims, threatened to boycott the census unless it did not allow Rohingya to self-identify.⁵⁶ Rakhine State authorities, including the police, argued that inclusion of the Rohingya as a census category would lead to more communal violence in the state.⁵⁷ In response to this pressure, the government did not allow Rohingya to identify as such on their ballots, despite the immigration minister assuring them that they would be able to do so.⁵⁸ As a result, some Rohingya boycotted the census, and for those who attempted to self-identify, the authorities passed over their homes.⁵⁹ The United Nations Population Fund (UNFPA), which funded most of the \$75 million survey, expressed deep concerns.⁶⁰

Mobs of thousands of Buddhists nationalists in Rakhine State capital Sittwe attacked the offices of international aid groups in an effort to chase out humanitarian workers assisting Rohingya Muslims.⁶¹ According to Buddhist nationalists, the attacks were prompted by a female

staffer for German-based medical aid group Malteser International taking down a Buddhist flag from outside the Malteser medical warehouse in a way that Buddhist nationalists perceived as disrespectful. Sittwe residents had put up Buddhist flags in the town to signal their boycott of the nationwide census allowing Rohingya to self-identify.⁶² Members of the angry mob threw stones at the staffer's home, searched for the private apartments of other Malteser aid workers, and ransacked the offices of the organization and other international humanitarian groups.⁶³ An 11 year old Rakhine girl was killed by a police bullet fired to disperse the angry crowds.⁶⁴ Malteser International stated that the staffer handed the flag to the warehouse's owner and did not act disrespectfully,⁶⁵ and a Malteser International spokesperson suggested that the Buddhist mob was organized and did not act spontaneously.⁶⁶ In response to the attacks, a spokesperson for President Thein Sein said that international aid workers should be more sensitive to local customs.⁶⁷ Following the attacks, humanitarian workers fled Sittwe, despite attempts by Buddhist nationalists to block passage to the airport.⁶⁸ All Malteser staff evacuated the town, leaving tuberculosis patients and other vulnerable people in jeopardy.⁶⁹ One newspaper estimated that at least 20,000 people in displacement camps around Sittwe will run out of drinking water within 10 days, and food will run out within two weeks.⁷⁰ Communities in other parts of Rakhine State will also be affected because international organizations use Sittwe as a staging point for providing supplies to almost 200,000 displaced people and rural villagers.

The attacks on humanitarian organizations in Rakhine State follow the government's decision in February to suspend the operations of Médecins Sans Frontières ("MSF"), also known as Doctors Without Borders, in the region. The New York Times reported that about 150 of the most vulnerable patients in Rakhine have died since MSF was banned from the state, with more than 20 of the deceased patients pregnant women who died in labor.⁷¹ An MSF referral had been the only way for pregnant women facing difficult deliveries to be transferred to a government hospital, and over ten thousand patients with tuberculosis, malaria or HIV relied on MSF as their only source of medicine.⁷² Rohingya patients have had difficulties securing referrals from government physicians and have been required to pay bribes to security guards to get past hospital checkpoints.⁷³ The government said it would accept supplies of medicine from MSF for distribution to needy patients, but how the supplies would be distributed remains unclear.⁷⁴ MSF was expelled from Rakhine in February after the organization treated Rohingya people following mob violence in Duu Chee Yar Tan village, an incident the government denies occurred.⁷⁵

United to End Genocide, an NGO run by former U.S. congressman Tom Andrews, released a report in March that finds that deteriorating conditions have put Myanmar in a downward trajectory that could end in the world's next genocide if the United States and the international community do not take immediate action. The report calls on President Obama to take stronger action to protect Rohingya Muslims from further violence.⁷⁶

B. Peace Talks

The government, military and leaders of ethnic armed groups have formed a joint committee to draft the nationwide ceasefire that will be composed of an equal number of representatives from the government and ethnic groups.⁷⁷ Government representatives will include three military commanders, three members of Parliament and three cabinet officials. This is considered a significant development because it is first time that the military will be directly

involved in peace talks, and that the two sides will attempt to write a single draft text rather than exchanging drafts.⁷⁸

The idea of a federal army, merging armed ethnic groups into the Myanmar military with some degree of autonomy, remains a key issue in negotiations. The issue is so sensitive that it may be left out of the ceasefire discussions and will instead be resolved in political discussions following a signing of the ceasefire.⁷⁹ Ethnic leaders want to autonomously control their regions and manage borders without commands from the Myanmar Army. The government has rejected these demands.

C. Miscellaneous

The International Human Rights Clinic at Harvard Law School released a policy memorandum documenting a pattern of indiscriminate and willful attacks by the Myanmar military on civilians, particularly in areas of conflict, including Kachin State and northern Shan State. These attacks have included “shoot-on-sight” directives, indiscriminant artillery shelling, extrajudicial killings and the use of landmines to inflict civilian casualties. The clinic said the offenses were “centrally planned” by the country’s military and constitute violations of international law.⁸⁰

As described above in Section IV.A. of this report, Myanmar administered a national census in late March that included a question asking for the respondent’s ethnic group. Many ethnic minority groups were deeply suspicious of the census and did not cooperate with its administration. Some armed rebel groups, including those in Kachin State and Wa Sarea, barred census takers from entering the territories they control because they worried the census would be used for political purposes.⁸¹ Kachin leaders claimed a government letter stated the census would be used to force ethnic armed groups to come “under the rule of law.”⁸² As a result of the Kachin Independence Organization (“KIO”) not allowing census takers into its territory, about 80,000 people in areas controlled by the KIO (representing at least 30% of the population of Kachin State) were left out of the census.⁸³ An undercounting could disadvantage Kachin residents politically because states budgets are based on population. Ethnic Shan feared facing criminal prosecution if they answered the census honestly.⁸⁴ One question asked whether any household members are currently working abroad, and more than a million Myanmar nationals are working illegally in Thailand. Ethnic minority leaders also said there was confusion about the classification of certain ethnic groups, and concern that rural minority people who do not speak Burmese would struggle to answer the census. Additionally, Mon people reportedly feared identifying themselves as Mon because their national identity card or household registration card lists them as Bamar.⁸⁵ There are also concerns that small tribes that were left off the census form will be erased from Myanmar’s official record.⁸⁶

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